

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **CHAIRMAN DALE MAHLUM**, on February 8, 2001 at 3:00 P.M., in Room 335 Capitol.

ROLL CALL

Members Present:

Sen. Dale Mahlum, Chairman (R)
Sen. John C. Bohlinger, Vice Chairman (R)
Sen. Chris Christiaens (D)
Sen. Jim Elliott (D)
Sen. Bill Glaser (R)
Sen. Duane Grimes (R)
Sen. Don Hargrove (R)
Sen. Ken Miller (R)
Sen. Emily Stonington (D)
Sen. Ken Toole (D)

Members Excused: Sen. John Cobb (R)

Members Absent: None.

Staff Present: Leanne Kurtz, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 216, 2/6/2001
SB 265, 2/6/2001
HB 111, 2/6/2001

Executive Action: SB 210 DP; SB 265 DP
SB 66 DPAA; SB 144 DPAA
SB 187 DPAA; SB 190 DPAA
SB 241 DPAA; SB 249 DPAA
SB 206 TABLED

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HEARING ON SB 216

Sponsor: SEN. DALE BERRY, SD 30, HAMILTON

Proponents: Tom Daubert, MT Solid Waste Contractors
Terry Archambeault, T & R Truck & RV Towing, Glasgow
Riley Johnson, National Federation of Independent
Business
Tom Earl, Great Falls
Dean Ulrich, BFI Waste Services, Bozeman
Gina Wilson, Bitterroot Disposal, Hamilton
Brett Kelly, Evergreen Disposal, Kalispell
Doug Sparrow, City-County Sanitation, Inc., Helena
Scott Leven, Disposal Service of MT, Lewistown
Peggy Trenk, MT Assoc. of Realtors
Webb Brown, MT Chamber of Commerce
Steve Jonas, Ron Hall Sprinklers, Great Falls

Opponents: Barbara Butler, City of Billings
Clark Johnson, City Manager, Bozeman
Will Selser, Lewis & Clark County

Informational Testimony: Sherrel Rhys, Jefferson County
Gloria Paladichuk, City of Glendive

Opening Statement by Sponsor:

SEN. DALE BERRY, SD 30, HAMILTON. Senate Bill 216 is similar to SB 215. This bill addresses full cost accounting (FCA) for the cities. Basically, the current law states that cities cannot charge under cost. Business people want to make sure that all government entities will be responsible to identify that cost accurately. Then business people can come in and do business with the city. The bill does not take government out of the solid waste business. They can stay in the business as long as they are competitive.

Proponents' Testimony:

Tom Daubert, MT Solid Waste Contractors. The counties and cities have stated that they already use FCA. Both bills have a primary goal. One is to insure that, with the use of traditional accounting, governments don't inadvertently subsidize their solid waste programs with fees and revenues that are gathered for other purposes. The bill does not preclude governments from charging more than actual costs. The second primary purpose is to insure that if a local government chooses to ask the private sector to bid on parts or all of a program, they will have the tools to

compare apples to apples. This requires local governments to account for all its costs the same as the private sector does. Local governments may or may not ask the private sector for bids and it does not require them to consider or evaluate the bids in any particular way. They are in total control over those kinds of questions.

One problem of the bill is addressed with the amendment **EXHIBIT(1os32a01)**. Right now, a citizen does not have the right to refuse government service so as to escape the government fee. The amendment clarifies that only when a citizen has chosen a licensed operator from the private sector that government cannot double charge them. Senate Bill 215 sought to eliminate local government power to ban the private sector. If that bill passes, there would be great disadvantage to the private sector if government could charge everyone whether they used the public or private sector service. The amendment makes that conform to existing attorney general decisions.

Another problem, which will be addressed in another amendment before executive action, occurred when, inadvertently, some types of costs were not included in the list. They are insurance, contracted services, etc. One other problem in drafting was to make sure that the definitions for indirect and direct costs conform completely to federal directives in local government accounting. While speaking with Mr. Scott Seacat, it became apparent that to be more compatible, more easily applied and to insure local governments would follow the bill, an amendment was necessary. The amendment would tie the whole process of FCA to the definitions that local governments already use by federal accounting directives.

There is a great deal of concern about Section 2. That is the compliance audit provision. The concern was that there would be a demand for too many audits and requests by just anyone. Since they are routinely audited now, they have presented an amendment to strike out Section 2 and instead use the existing audit process as the vehicle for checking that FCA is being done adequately. The amendment is conceptually acceptable.

Terry Archambeault, T & R Truck & RV Towing, Glasgow. One point that he made is this bill is not only directed to the big cities and big private companies. This stuff trickles down to the little guys. He and other small haulers look at the city budgets and there is an attitude that they have to use it or lose it. If the cities didn't have these funded budgets they would be more prudent in the use of their budgeted money.

Riley Johnson, National Federation of Independent Business. They stand in support of the bill. FCA in public agencies is the right policy and the right direction to go.

Tom Earl, Great Falls. The counties apparently didn't seem to feel that FCA would make the playing field more level. He is an example that it would. He charges \$7.50 for a truckload of garbage at his landfill. A friend asked him why he didn't charge \$2.00 like the city did. He answered that he would if he could be subsidized by tax dollars and mill levies. In 1988, John Laughton announced a street and sanitation rate increase of 17%. He publically stated that the reason for the justification for that mill levy increase was to operate the Citizens Convenience Center. That shows that he publically admitted that he is providing a service below his actual cost and subsidizing it with taxes and mill levies. That is not fair. Eventually, it decreases the tax base by putting people like him out of business. All his equipment is off the tax roles because it is gone. It oppresses the 15th in the nation per capita income people in Montana who earn less than \$20,000 a year because if they don't use that Citizens Convenience Center, they still have to pay for it. Even if the Center is closed down, people are still paying for it. A budget was printed in the Great Falls Tribune in 1998 showing why they should and could compete with his company and they left out obvious costs like the cost of the land, costly fencing of the land, street department trucks and manpower, graders, ground maintenance, office help from the Dept. of Parks and Recreation and the Civic Center. A budget published like this is deceitful to the public. They don't know where their money goes. It would be good to put business back in the hands of those who pay the taxes and mill levies.

Dean Ulrich, BFI Waste Services, Bozeman. He competes directly with **Clark Johnson, City Manager of Bozeman** and their company is one of the city's largest customers at the landfill where over \$1 million per year is paid to Bozeman for that use. He handed out some pages of Bozeman's latest budget proposal **EXHIBIT (los32a02)**. He listed some of the problems with the proposed budget and showed actual costs for solid waste disposal. He felt that their proposed revenue is not enough to cover their expenses. FCA is the way to go if they follow the definitions of costs in SB 216.

Gina Wilson, Bitterroot Disposal, Hamilton. They are a small family-owned business. They have to compete with other businesses, but at this time don't have to compete with their city. They would welcome that competition if the city followed FCA and had fair, honest and accurate figures. She, as a resident of Hamilton and not only a business owner, believed that

all cities should show accurate figures and not subsidize those figures.

Brett Kelly, Evergreen Disposal, Kalispell. His is another small family-owned business. This is not a big business bill. They are greatly affected by the law and support this bill.

Doug Sparrow, City-County Sanitation, Inc., Helena. They stand in support of the bill.

Scott Leven, Disposal Service of MT, Lewistown. They are in full support of the bill.

Peggy Trenk, MT Assoc. of Realtors. The realtors support the bill. She also spoke for **Webb Brown, MT Chamber of Commerce**, who could not be in attendance. The Chamber also supports the bill.

Steve Jonas, Ron Hall Sprinklers, Great Falls. He gave his testimony and handed in a written copy **EXHIBIT(1os32a03)**.

Opponents' Testimony:

Barbara Butler, City of Billings. She handed in a letter of opposition **EXHIBIT(1os32a04)** from Lake County Solid Waste District. The City of Billings opposed SB 216. It undermines and usurps local government choice and control on how to handle solid waste disposal. She described how public and private sectors view solid waste disposal. The private sector views garbage as money. The city views landfills as an expense where air space is something to be maximized for public benefit. The most important part of her job is to maximize the life of the landfill. They do not want to be captive to a transfer station and those fees. The expenditures to keep the landfill going such as hazardous waste programs, used oil and anti-freeze recycling centers, composting program, etc. are necessary. There is nowhere in the definition of FCA where these programs can be incorporated. It does not allow for comparing apples to apples because they are apples and the private sector are oranges. If the City of Billings were to lose their residential hauling, they would have to ask for a rate increase. They would be forced to cut the services that keep the landfill open. They would no longer be in control of the solid waste disposal program.

Clark Johnson, City Manager, Bozeman. He felt the numbers given by **Mr. Ulrich** were taken from an abbreviated budget. Bozeman has received the government finance officer's award for excellence in government finance reporting for nineteen years. This bill would usurp the rights of the citizens. Bozeman does not subsidize their solid waste program. They do subsidize their pick-up

system with the landfill fees. The citizens chose to do that. They went to a volume based system. They want to encourage the reduction of the amount of solid waste generated. FCA is not a problem but communities do reserve the right to chose whether or not they want to subsidize one piece of their operation with another in order to achieve a greater good. He handed in his letter of opposition **EXHIBIT(1os32a05)**.

Will Selser, Lewis & Clark County. He hoped the committee would verify the statements that had been made. The amendment that **Mr. Daubert** talked about on page 1, line 17 where if someone chose a PSC protected hauler, they cannot be charged for the solid waste district services in that area. Where does the garbage go? The county does not charge haulers to bring garbage to the transfer station. It is already built into their annual assessment. A bad situation would be created if someone chooses a PSC hauler and exempts themselves out of disposal costs. The title of the bill did not have anything to do with FCA.

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There have been comments about equal competition. But in SB 215, 216 and 278, PSC Class D permits do not subject the private haulers to any real regulations. Rate complaints to the PSC are not even logged in because they have no legal oversight of that industry's rates. Complaints about service or rates are confidential. The public cannot see who receives complaints or how many complaints exist. The PSC staffer that he had spoken to indicated the number of complaints about BFI's Missoula operation were substantial and continuous. The haulers' PSC licenses do not require them to provide service to all residents of their protected area. It only requires them to offer the service at whatever rate they chose. If one of these giant corporations, and make no mistake that is what these bills are about, buys a small hauler's Class D permit and keeps the old corporate name, they are not required to even notify PSC about the ownership change. The PSC does not have a clue to how widespread the ownership of these small hauling permits is by Waste Systems of MT or BFI. These bills presented to the committee have been portrayed as bills to protect the mom and pop haulers from the ravages of unfair government competition. The real reason is that these bills would pave the way for the two major players, BFI and Waste Systems of MT, to lock up the hauling and landfill capacity statewide. BFI has and continues to buy up the small haulers in the Bozeman and Billings area. It recently went before the PSC trying to deny a small mom and pop hauler in Billings the ability to compete. BFI is a multi-national, multi-business corporation. Waste Systems of MT are busy buying up all the hauling permits along the northern tier of Montana. They

have Lewistown and have just purchased a mom and pop hauling service in Whitefish. They have a standing offer to buy the mom and pop service in the Helena valley. While many of these small haulers profess no desire to sell out, these two large corporations have a standard response: everyone has a price. First the airline industry was deregulated and then power generation. Does the committee want to set the stage for non-competitive, non-regulation rules in the solid waste industry in Montana. He handed in three articles in support of his statements **EXHIBIT(1os32a06)**, **EXHIBIT(1os32a07)**, **EXHIBIT(1os32a08)**.

Informational Testimony:

Sherrel Rhys, Jefferson County. Solid waste districts are regulated by the State of Montana. A separate bookkeeping entity is required. That entity requires them to run their program like a business. They charge fees and if those funds are not used in that year, the funds are there for them the next year. They do not go into the general fund. They account for all expenses and all revenue.

Gloria Paladichuk, City of Glendive. She had spoken with the auditor in Glendive and he said they were complying with FCA. The audit amendment is acceptable to the city. Current audits are conducted by private auditors and are available for public inspection. The auditor is concerned that the bill would not allow them to set aside money for the opening of a new landfill in the future. They want to continue setting money aside for that. They would also like to depreciate out equipment which would set aside money for future purchases. As a former commissioner she related that if the road department did any work for the solid waste program they were charged for that because the people who live in incorporated cities do not pay into the road fund and in the solid waste program everyone pays into it. So it was important that everything be charged out accordingly.

Questions from Committee Members and Responses:

SEN. CHRIS CHRISTIAENS inquired what fund was being spoken of. **Sherryl Rhys** responded that it is called an enterprise fund. It is a separate account and within the fund, money can be set aside to purchase equipment in the future. Their accounts are set up by law to charge the actual cost of providing solid waste service.

SEN. CHRISTIAENS asked when there is a change of ownership, aren't the private haulers required to notify the PSC of that change. **Max Bauer, General Manager, BFI Waste Services.** I felt

that Mr. Selsor was not correct in many of his earlier statements. He was almost slanderous. The PSC has to approve every transfer of every permit. When a permit is even leased, there is a notice process to the PSC which includes hearings, notices, ads, etc. It takes seven to eight months. The PSC does log every complaint that comes in. They call him and Missoula has the least number of complaints. They average less than two written complaints a year. They serve 25,000 customers.

SEN. EMILY STONINGTON sought an answer to the question of can there be a level playing field between the public and private sector in the solid waste management arena. **Clark Johnson** felt that the issue of the bill was whether cities should be allowed to subsidize a service for a different public value. Subsidizing is consistent with many operations of local government already. Education is the greatest example. This budget year, the governor has requested \$460,000 to subsidize a library hook-up system. He knew that BFI's rates in town are similar to the city rates, while in the county their rates are much higher. He assumed that they must be subsidizing their city rates with their county rates. If a company were required to disclose their total costs and revenue, perhaps that would make it fair for both sides.

SEN. STONINGTON asked if, in Bozeman, someone cannot afford trash pickup, who is responsible for that. **Mr. Johnson** replied that the city taxpayers end up paying for that service. As rates escalate and orphan materials become a bigger problem, orphan materials may be picked up by the road department or city service departments that have no off-setting revenues.

SEN. STONINGTON questioned the advisability of anyone being able to demand an audit. **Tom Daubert** replied that the proposed amendment would strike that portion out of the bill. Another amendment that is being worked on with Mr. Seacat would insure the definitions of the bill concerning direct and indirect costs conform to federal guidelines.

SEN. STONINGTON inquired if he wouldn't agree that the city should be able to subsidize some of its benefits to the community. **Mr. Daubert** would agree with the fundamental point that both the cities and counties should be able to do what their citizens want. It is important that the local citizens are knowledgeable about what a service does cost as compared to how it might be subsidized.

SEN. STONINGTON said the bill indicates that the rates may not be less than the cost for providing the services. If the community chooses to subsidize that service they should be allowed to do

so. **Mr. Daubert** responded that the bill requires cities to do this as existing law already requires of cities and counties.

SEN. JOHN BOHLINGER inquired if his rates for Billings would remain the same, with the same good service if the bill should become law. **Barbara Butler** replied that FCA is not an issue for Billings. She further stated that rates would likely increase.

SEN. BOHLINGER wanted to know how many years were left in the landfill south of the river. **Ms. Butler** said that Billings has 280 acres permitted to receive waste. That has been estimated to last 45 years.

SEN. BOHLINGER asked if BFI owns any landfill in the state. **Mr. Bauer** replied they own only one and that is at Missoula. They have no plans at the present time to purchase another landfill in the state. MT Waste Systems owns one landfill also.

SEN. BOHLINGER desired to know what BFI would charge its customers if they were allowed to collect in Billings. **Mr. Bauer** answered the rates would be similar to the city's rates. Fees are based on density and volume. The more customers, the lower the fees. For the committees information, freon and materials of that kind are not allowed in landfills.

SEN. DON HARGROVE needed clarification on the statement that a public entity is concerned with such things as public health, hazardous waste, recycling, etc. while a private entity wouldn't be. **Ms. Butler** reiterated that part of her job is to keep the landfill open as long as possible. This requires recycling and other programs that cost money.

SEN. HARGROVE did not see how a city could actually do FCA. There are too many things intertwined. **Mr. Clark** informed the committee that their solid waste program which includes both collection and disposal is an enterprise fund and the city does FAC. They charge administrative fees against the enterprise fund that is involved. The city accounts for overhead costs that are done by other general fund supported entities. The city supports the general fund by drawing out of the solid waste for the work that is done by others. It is possible but the value system is harder to account for.

SEN. JIM ELLIOTT asked where BFI has services and how they set their rates. **Mr. Bauer** answered in Bozeman, Billings, Missoula and smaller communities like Polson, Three Forks and West Yellowstone. He said there are 27 different options for Missoula alone.

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SEN. ELLIOTT asked if a small carrier could compete with a large company like BFI. **Doug Sparrow** replied he would try his hardest. In Missoula, BFI is very competitive. They have a large market and would be more reasonable than he could be.

SEN. CHRISTIAENS wondered if the bill would pass and local haulers would get the contracts, what would happen to the landfills that are owned and operated by counties now. The cities would have to charge local haulers to use the landfill, but would the private hauler have to site a new landfill.

Mr. Sparrow said they currently own their own landfill. They do strictly commercial garbage and some residential from Jefferson County. He didn't know about other cities. **Tom Daubert** answered that almost all landfills are owned and operated by the government.

SEN. CHRISTIAENS then asked what happens when these landfills are full. Will private enterprise then site new landfills. **Mr. Daubert** responded that local governments will have to face that question with or without the bill. Government then would have to decide whether they would site a new landfill or let the private company do that. If they site the landfill they would contract with private haulers and charge for the use of the landfill.

CHAIRMAN DALE MAHLUM requested a quick rundown on how Jefferson County performs their FCA procedure. **Sherrel Rhys** explained they looked at the current law. The current law says the county is to charge the actual cost of providing services. It was set up like a private business. First set up was on direct cost like labor, insurance, running trucks, fuel, etc., all things that produced a bill. That is run every month. Those bills come out of the solid waste district budget. Next set up was indirect cost. There were mainly only two: 1) supervision by the county commissioners and 2) supervision by the county attorney. The budget is then set and the county works hard to make sure the budget balances with actual cost of providing services. Other costs are telephone, clerk and recorder for doing payroll, office rent, electricity, etc. The county sets money aside every year for a new landfill, to replace a truck or what have you. Operation costs are looked at as well as requests coming from the county for providing additional services. Residents from Jefferson County want recycling services. Although recycling does not make money, it actually costs money, it does cost less than the cost of hauling it to a landfill. It is a choice and one made for the best interest of the county. Dillon and Helena have chosen to recycle and have a separate fee even though it is

an addition cost. That is an option that government has and that is in response to the public demand.

Closing by Sponsor:

SEN. BERRY closed. It is important to keep in mind the cities who have exclusive hauling have the density and the volume to keep costs down. Out in the county, it is different. Whether a city or county should be able to subsidize their rate, that is not the question. But it is in state law that they must not charge under their cost. If one is paying \$79 a year for garbage, some place your tax dollar equates to another \$79 for some cost that might be associated with solid waste. That is a cost that should be recognized. If the public agrees to that subsidization, so be it. The interim study came to the conclusion that it is beneficial to local governments to have full cost accounting that shows where every dollar goes for a particular service. This helps them in their own budgeting. Some of the fear shown here is unwarranted. This bill does not address Helena and Billings and Bozeman and BFI. This covers the whole state. But the ones who are in opposition to the bill are from the big cities. The smaller communities are not here in opposition. In looking at the space, make sure you don't get hung up with the landfill questions. Whether private or public carries, siting landfills will be necessary at some point. As to the large company acquiring all the little haulers, that would become an anti-trust issue and something different altogether. And heaven forbid, if a small hauler wishes to sell, that is their prerogative. If they can get a fair price, great. This bill will not take local governments out of the solid waste business. If they are competitive and do not charge less than their cost, they can stay in business forever. The private haulers would like a level playing field.

HEARING ON HB 111

Sponsor: REP. BOB LAWSON, HD 80, WHITEFISH

Proponents: Tom Jentz, Planning Director, Flathead County
Howard Gipe, Flathead County Commissioner
Johna Morrison, Administrator, Lake County Lakeshore
Protection Program
Paddy Trusler, Lake County Commissioner
Gary Marks, City Manager, Whitefish
Jane Jelinski, MT Assoc. of Counties

Opponents: None

Opening Statement by Sponsor:

REP. BOB LAWSON, HD 80, WHITEFISH. The lakeshore protection program was authorized in state law in 1975 to protect lakes and resources and provide a process whereby local government was given authority to review all construction activities within a lake, on a lake or within 20 horizontal feet of the lake.

He read from the MCA, Section 75-7-201. "Policy. The legislature finds and declares that the natural lakes of Montana are high in scenic and resource values and that the conservation and protection of these lakes is important to the continued value of lakeshore property as well as to the state's residents and visitors who use and enjoy the lakes. The legislature further declares that local governments should play the primary public roles in establishing policies to conserve and protect lakes. Local government does not have adequate statutory powers to protect their lake areas, and it is the purpose of this part to confer such powers on local governments, provided that such powers are exercised to maintain public health, welfare, and safety."

The title of the bill is "an act removing the limits on local lakeshore protection fees, and whereas the revenue from the maximum local lakeshore protection fees established in Montana law is substantially less than the cost of administering the lakeshore protection laws; and whereas the lakeshore protection laws impose a significantly underfunded mandate on local governments."

House Bill 111 eliminates a specific maximum fee while maintaining the criteria on which fees should be assessed. This would allow the local government to set fees that reflect the level of services demanded by the program. The fiscal note shows no fiscal impact to the state. It would be helpful to counties.

He then read a short history of the lakeshore issues. In 1975 the Legislature passed 75-7-2 establishing the Lakeshore Protection Program. At that time section 75-7-210 set permit fees at \$10 per application regardless of scale or activity. In 1991, a bill was submitted to the Legislature by Lake County to eliminate the \$10 permit fee cap and allow local governments to establish fees locally to cover the cost of administering the program. The Legislature responded by raising the maximum limits that could be charged to \$25 for residential permits, \$60 for commercial permits and \$60 and \$150 respectively for variances.

Inflation in the past 10 years has eroded the value of the permit fee structure, a structure that was inadequate at the time it was adopted. Rather than going to the Legislature every 10 years to

ask for a fee adjustment, it would seem appropriate to allow local jurisdictions to set fees based on the criteria outlined, i.e. complexity of project, need for on-sight inspection and estimated cost of project.

Over the past six years, 144 lakeshore construction permits per year have been processed in Flathead County. This year they will top 200, with 50 on Whitefish Lake alone. Typical projects include docks (piling crib and floating), decks, retaining walls, rip-rap work, fill and excavation work, water main installations, boat ramps, boat shelters, shore-stations and requests for major vegetation removal. They estimate that the average permit costs between \$79-\$121 to administer on-site visits, staff review, local government review and approval and follow-up inspections. Revenue for permits this year will be \$5,000, yet the actual cost of administering the program is running \$15,000 - \$23,000 based on these numbers. The result is the cost is shifted to other taxpayers.

Proponents' Testimony:

Tom Jentz, Planning Director, Flathead County. He has been in this program for 17 years. The program is focused on Flathead County and Lake County and some in Missoula and Lincoln counties. The bill addresses only natural lakes. It has to be at least 160 acres of natural lake. Flathead has exceptions down to 20 acres. He outlined the program. He showed pictures showing all the different kinds of projects that had been done. They meet, go out to the site, read reports, get approval and then do follow-up inspections. They had about 200 permits in 2000. Some sites are as far as 35-40 miles away. The types of projects they are involved in are rip-rap, retaining walls, docks, big docks, etc. The projects are much larger than the fees begin to cover.

Water quality is the number one issue in Flathead County. Flathead and Lake Counties have had a successful joint program. The Army Corp know that they are doing a good job. Other programs across the state do not have caps on their fee structures. The local government should be allowed to set fair fees. His last point was that set fees erode over time.

Howard Gipe, Flathead County Commissioner. He asked for support for the bill.

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Johna Morrison, Administrator, Lake County Lakeshore Protection Program. The lakeshore program is not supporting itself on the \$25 fee. Lake County issues approximately 100 permits per year.

A simple, no frills permit takes four hours from receipt of application to final inspection. More complicated permits can take from five to ten hours. Some lakes are more than one hour away. It can take hours to talk to contractors and landowners and do research. Variances are a minimum of ten hours, violations take as much as twenty-five hours. That does not include county attorney time or commissioners' fees. A maximum fine for violation is \$500. This does not begin to cover staff time fees. The program is a great one, but the lakeshore owners should share more of the brunt of the cost of lakeshore permits.

Paddy Trusler, Lake County Commissioner. He gave his testimony and handed in a written copy **EXHIBIT(los32a09)**. He handed in a letter of information from Lake County **EXHIBIT(los32a10)**.

Gary Marks, City Manager, Whitefish. One often hears that government should run efficiently like a business. The lakeshore program is not being run like a business. It is a losing proposition and the taxpayers shoulder the difference.

Jane Jelinski, MT Assoc. of Counties. They are in support of the bill.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. DUANE GRIMES inquired if there had been any discussion with Missoula County as they have many small lakes. In Missoula County a person cannot fix up the structure of lakefront property any more than 50% of the current size. **Tom Jentz** had contacted the four offices who are in the program. They issue between 6-10 permits a year. They have no intention of altering their program fees at all. It is such a minor program for them. Lincoln County was the same. They issue about 10 permits a year and they saw no reason to adjust their fees.

SEN. GRIMES asked about Canyon Ferry. **Mr. Jentz** said the law specifies only natural lakes. Canyon Ferry is not a natural lake. Reservoirs would not be included.

SEN. JOHN BOHLINGER noticed that the fee structure was established in 1975. Why has it taken so long to ask for change. **REP. LAWSON** responded that they should have been here sooner.

SEN. CHRIS CHRISTIAENS said that the bill would establish a permit fee. In light of the Governor's remarks about fees, did the sponsor see a problem with getting her signature on the bill. **REP. LAWSON** had not talked to the Governor but he did not think

it would be a problem. The local government would not be setting higher fees, only covering the cost of the permit.

SEN. CHRISTIAENS informed the committee that in current law, the Dept. of Public Health and Human Services do many inspections and he felt that this bill could imitate their rules concerning fees. The bill could be changed to say that the fees would be actual cost. **REP. LAWSON** responded that the bill says that the local governing body shall establish a permit fee as provided in subsection 1, that the permit fee must reasonably address the cost of administering the permit application.

SEN. CHRISTIAENS asked Leanne Kurtz, Legislative Staff, if it would not be better to allow the local governments to charge what the actual cost is rather than setting a fee. That is done in public health.

CHAIRMAN DALE MAHLUM saw one problem. If local government would set exorbitant fees and people were upset, that would reflect badly on the legislature.

Closing by Sponsor:

REP. LAWSON closed. It is a matter of local control and local responsibility. He did not believe that the Lakeshore Protection Program was out to fleece the people. Those who apply for the permits should cover the cost of the application and process and not have other taxpayers subsidize their permits.

HEARING ON SB 265

Sponsor: SEN. DON HARGROVE, SD 16, BELGRADE

Proponents: Bill Murdock, Gallatin County Commissioner
Ed Blackman, County Fiscal Office, Gallatin Co.,
Bozeman
Jane Jelinski, MT Assoc. of Counties
Glenda Noyes, Bozeman
Mona Jamison, Representing Gallatin County

Opponents: None

Opening Statement by Sponsor:

Sponsor: SEN. DON HARGROVE, SD 16, BELGRADE. There was an effort in the last session to give a small tax break to residential home property owners through SB 184. There were some ripple effects from that bill. One of those ripples affected mills levied in the county which set up a "use it" or "lose it" system. If the maximum mills authorized were not used, they could not be used the next time around. So the counties would use the maximum number of mills. This is not good government and not good for the taxpayers. This bill corrects that inequity.

Proponents' Testimony:

Bill Murdock, Gallatin County Commissioner. This bill would allow local government the ability to lower taxes without having to get a vote of the people later to get back to the base year level. Currently the tax structure does not give counties the incentive to do this. Occasionally, in special funds like the health fund, or a fire district, there could be cash carry over. Under current law, the counties would continue to tax the people the full amount because the county could not come back up to that five mills if they needed it in a future year without going to a vote of the people. This bill states that the counties could come back to the base year level. When those times do come and there is cash carry over they would not have to continue to ask for the full amount. There are planning districts. Some are very active in requesting building permits. They are charged fees as people build. The one mill is not needed every year. The counties could not ask for that one mill and thereby give taxpayers a break. If it were needed down the road it could be reinstated without going to the people for a vote. This would allow local government officials to be more fiscally responsible.

Ed Blackman, County Fiscal Office, Gallatin Co., Bozeman. Prior to SB 184, taxes were a final number that the fiscal office would look at. After SB 184, that procedure was reversed. The thought was what was the maximum number of dollars that could be generated instead of what was needed. Again, if the full amount was not used, then it would be lost. It is better to decide what is needed to operate. If the extra dollars are not needed this year, then next year they may be needed.

Jane Jelinski, MT Assoc. of Counties. The Association is in support of the bill. County commissioners are frugal and this bill rewards frugality. She handed in a letter of support from Toole County **EXHIBIT (los32a11)**.

Glenda Noyes, Bozeman. She was present at a county commission meeting in October 1999 where they struggled with the dilemma of

wanting to place less of a tax burden on the residents of Gallatin County while knowing that if they did so, there could be a consequence in future budgets. These people are elected to take care of today and tomorrow; they voted to levy the maximum number of mills and use the floating mills for the fiscal year 2000. In fiscal year 2001, there were unexpected fire expenses and the rise in power costs. The decision to levy at that maximum the year before was a relief to all. However, without the passage of SB 265, the dilemma that Gallatin County faced will continue.

Mona Jamison, Representing Gallatin County. The county commissioners are in full support of the bill. This bill of fiscal responsibility is good sound policy. The "use it or lose it" philosophy creates distrust in local governments and state government. To allow a county to impose the minimum levies necessary to operate makes good sense.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. EMILY STONINGTON inquired if this bill was part of the "big bill" coming from the House. Is a coordinating cost necessary.

SEN. HARGROVE replied that as he understood it, that would logically occur somewhere as the two bills pass between the two houses.

CHAIRMAN DALE MAHLUM declared that SB 265 is an excellent bill. He related that in his county, taxes were going up 12-14%. His property taxes went up 17%. Their RV Resort taxes went up 26%. The county assessors office said it was the legislature's fault. Senate Bill 185 was the culprit. They could raise taxes and mills by as much as they want.

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Closing by Sponsor:

SEN. HARGROVE closed. It will help everyone out and will help government agencies to be able to plan their budgets more appropriately.

EXECUTIVE ACTION ON SB 265

Motion/Vote: **SEN. CHRISTIAENS** moved that **SB 265 DO PASS**. Motion carried unanimously.

EXECUTIVE ACTION ON SB 144

Motion: SEN. HARGROVE moved that SB 144 BE AMENDED
EXHIBIT(los32a12) .

Discussion:

Leanne Kurtz, Legislative Staff, explained the amendments. She said that the amendment strikes sections one and two of the bill because they should not have been in the bill. The Department of Commerce conducts the audits. The Department of Revenue does not want to be involved.

CHAIRMAN DALE MAHLUM had spoken with **SEN. LINDA NELSON** and she said there was an amendment that would correct the bill and that it was a good bill.

Vote: Motion that SB 144 AMENDMENT BE ADOPTED carried unanimously.

Motion/Vote: SEN. HARGROVE moved that SB 144 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON SB 210

Motion/Vote: SEN. TOOLE moved that SB 210 DO PASS. Motion carried unanimously.

EXECUTIVE ACTION ON SB 190

Motion: SEN. BOHLINGER moved that SB 190 BE AMENDED
EXHIBIT(los32a13) .

Discussion:

SEN. BOHLINGER explained the amendment. Following "managed" the words "by the program" were inserted.

SEN. EMILY STONINGTON commented that she didn't have a problem with the bill or the amendment but she still did not like to clutter up the Montana Constitution with multiple listings of different things. She tried to get these things consolidated but it just couldn't be done. It would be too confusing as to what

was presented to the electorate. There are also slight differences in how they are being managed.

Vote: Motion that **SB 190 AMENDMENT BE ADOPTED** carried 10-1 with Elliott voting no.

Motion/Vote: SEN. COBB moved that **SB 190 DO PASS AS AMENDED.**
Motion carried 10-1 with Elliott voting no.

EXECUTIVE ACTION ON SB 187

Motion: SEN. COBB moved that **SB 187 BE AMENDED EXHIBIT(1os32a14).**

Discussion:

SEN. JOHN COBB explained the amendments. There was a question between the newspapers and MACO whether websites should be included. They agreed to take that out. There was one technical correction about not being called 2nd class on page 1, line 30. It states the newspaper must be a general paid circulation of a 2nd class mailing permit. That is supposed to be "periodical" not "2nd class.

Vote: Motion that **SB 187 AMENDMENT BE ADOPTED** carried unanimously.

Motion/Vote: SEN. COBB moved that **SB 187 DO PASS AS AMENDED.**
Motion carried unanimously.

EXECUTIVE ACTION ON SB 206

Motion/Vote: SEN. COBB moved that **SB 206 BE TABLED.** Motion carried 10-1 with Mahlum voting no.

EXECUTIVE ACTION ON SB 241

Motion: SEN. COBB moved that **SB 241 BE AMENDED EXHIBIT(1os32a15).**

Discussion:

SEN. COBB explained the amendment. "The Board of County Commissioners may appoint enforcing officers to supervise and enforce the provisions of the zoning resolution" is being taken out. It was a 1950's law that didn't need to be in statute any longer. Another part of the amendment included citizen members from the zoning area to be included on the zoning commission.

Vote: Motion that **SB 241 AMENDMENT BE ADOPTED** carried unanimously.

Motion/Vote: **SEN. COBB** moved that **SB 241 DO PASS AS AMENDED.** Motion carried unanimously.

EXECUTIVE ACTION ON SB 249

Motion: **SEN. TOOLE** moved that **SB 249 BE AMENDED EXHIBIT (los32a16).**

Discussion:

SEN. TOOLE explained that he felt the fiscal note was very high and did not agree with it. Amendment three would say that any additional costs that would be incurred would be included in the rental rates. Amendment four states the department would annually compile and publish a report of space leased in the state and what was not located in downtown areas. The excluded departments are those that would not work well if located downtown due to their type of work.

CHAIRMAN MAHLUM felt the hearing was good and that it was a fairly good bill. There had been many proponents.

Vote: Motion that **SB 249 AMENDMENT BE ADOPTED** carried unanimously.

Motion/Vote: **SEN. TOOLE** moved that **SB 249 DO PASS AS AMENDED.** Motion carried unanimously.

EXECUTIVE ACTION ON SB 66

Motion: **SEN. HARGROVE** moved that **SB 66 BE AMENDED EXHIBIT (los32a17).**

Discussion:

SEN. JOHN BOHLINGER realized that there had been some serious questions that needed a response. Jani McCall had prepared some facts for the committee **EXHIBIT(10s32a18)**. One question was how many attorneys have become judges and how many have left the field. In the 1990's five have become judges. In 1991 there was a 25% turnover. In the last election cycle there had been quite a turnover. Three county attorneys who already have approximately 95% of district court judges' salaries are willing to freeze their salaries in order to bring the rest of the county attorneys into an equitable salary position.

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The 1999 Legislature, by sun-setting the longevity payments to county attorneys, postponed this issue until this session so that the 2001 legislature could find a permanent solution regarding county attorney pay. This issue should be settled now rather than postponed.

Montana needs good county attorneys to prosecute criminals effectively and protect the citizens.

The amendment is a phase-in schedule for implementing the pay increase. It will be finalized in the year 2005.

CHAIRMAN MAHLUM believed that the county attorneys should receive an increase in salary and be more comparable to the district court judges. The problem is the money. He questioned the advisability of the state taking over the payment of salaries totally.

SEN. BOHLINGER answered that in 2003 there would not be an increase for the state. In 2004, the state would assume 60% payment of the salary.

SEN. STONINGTON offered the comment that if the legislature recognizes the need for the bill, the committee should move the bill forward. If it became law, in 2003 the legislature would be able to take a look at it. It would provide the policy and the money would come later.

Vote: Motion that **SB 66 AMENDMENT BE ADOPTED** carried 9-2 with **Grimes and Miller** voting no.

Motion: **SEN. TOOLE** moved that **SB 66 DO PASS AS AMENDED**.

Discussion:

SEN. DUANE GRIMES felt it was a mistake to attach the county attorneys' salary to the judges' salary. If this bill goes forward, and he does see the need for it, the salary should be on a survey basis as conducted by the Department of Administration with like surrounding states. He did not like to vote on policy that future legislatures would have to contend with. That was done in the 1980's and future legislatures had to pay for that in the 1990's. Implementing it slowly is fine, but the state should take some of the hit now. It should be based on a more objective cost basis.

SEN. STONINGTON would vote for the bill but recommended that **SEN. BOHLINGER** work with the county attorneys to see if they would be agreeable to any other form of obtaining equity in the system. It would be good to see if another option would work as well.

SEN. TOOLE asked how the three county attorneys' salaries could be frozen.

Vote: Motion **carried 9-2 with Grimes and Miller voting no.**

ADJOURNMENT

Adjournment: 6:00 P.M.

SEN. DALE MAHLUM, Chairman

MARY GAY WELLS, Secretary

DM/MW

EXHIBIT (los32aad)